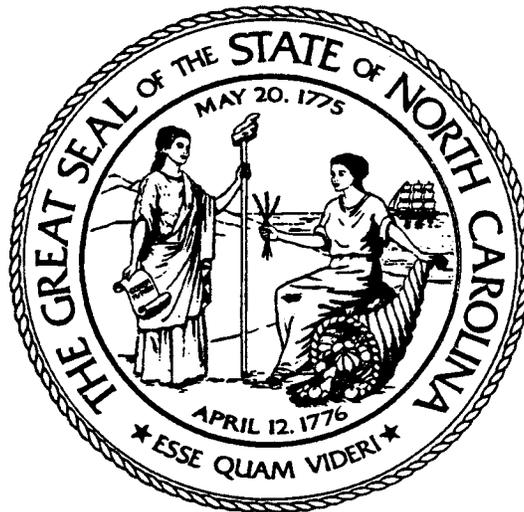


**LEGISLATIVE  
RESEARCH COMMISSION**

---

**COMMITTEE ON INSANITY VERDICT AND  
GUILTY BUT INSANE VERDICT**



**REPORT TO THE  
1991 GENERAL ASSEMBLY  
OF NORTH CAROLINA  
1991 SESSION**

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STATE OF NORTH CAROLINA  
LEGISLATIVE RESEARCH COMMISSION  
STATE LEGISLATIVE BUILDING  
RALEIGH 27611



December 14, 1990

TO THE MEMBERS OF THE 1991 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on the insanity verdict and the guilty but insane verdict. The report was prepared by the Legislative Research Commission's Committee on the Insanity Verdict and Guilty But Insane Verdict pursuant to Section 2.1(17) of Chapter 802 of the 1989 Session Laws.

Respectfully submitted,

Handwritten signature of Josephus L. Mavretic in cursive script.

Josephus L. Mavretic  
Speaker

Handwritten signature of Henson P. Barnes in cursive script.

Henson P. Barnes  
President Pro Tempore

Cochairmen  
Legislative Research Commission



1989-1990

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

Speaker of the House of  
Representatives  
Josephus L. Mavretic, Cochair

Rep. Joanne W. Bowie

Rep. J. Fred Bowman

Rep. Harold J. Brubaker

Rep. James W. Crawford, Jr.

Rep. John W. Hurley

President Pro Tempore of  
the Senate  
Henson P. Barnes, Cochair

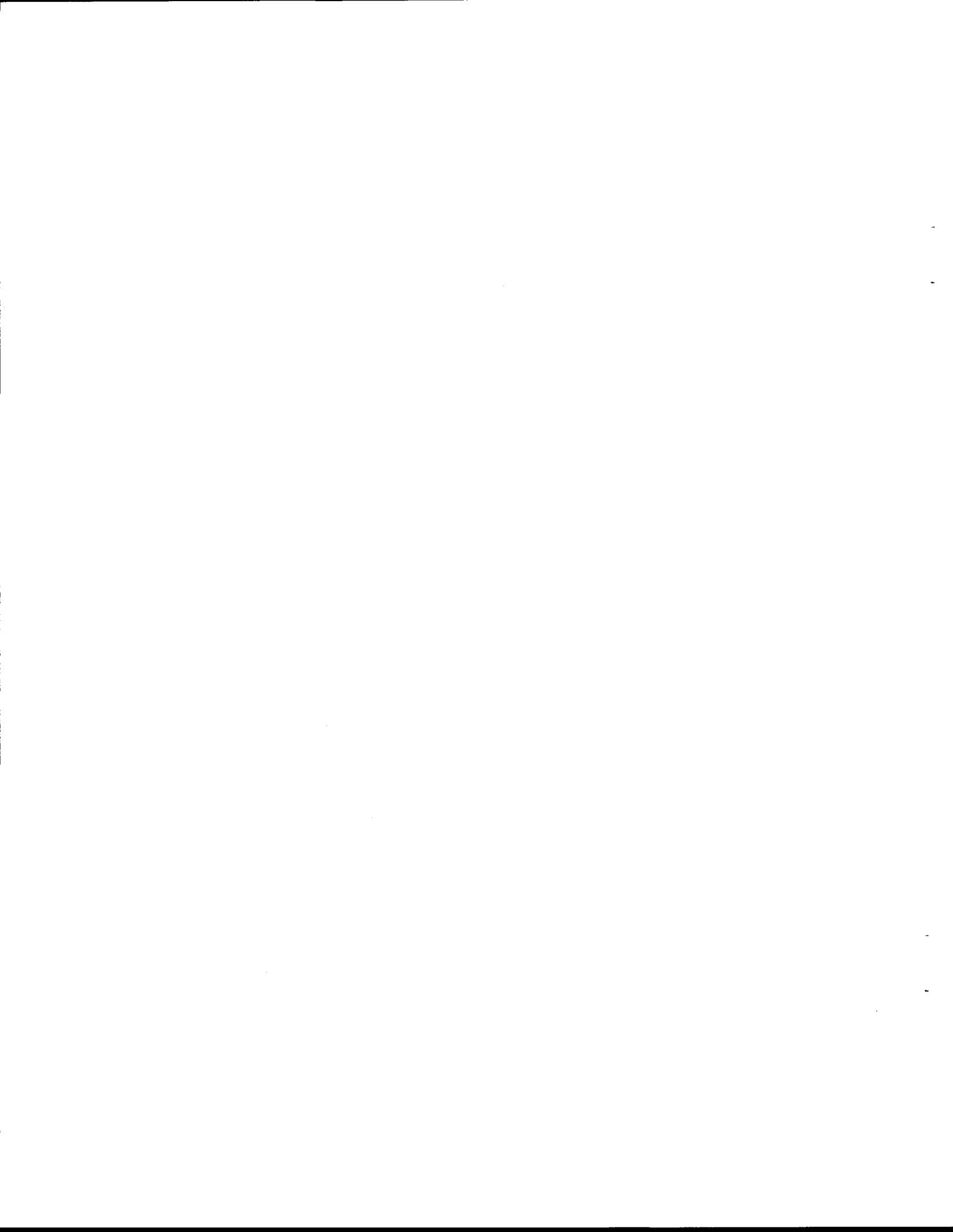
Senator Ralph A. Hunt

Senator Donald R. Kincaid

Senator Robert L. Martin

Senator Lura S. Tally

Senator Russell G. Walker



## PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1989 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of the insanity verdict and the guilty but insane verdict was authorized by Section 2.1(17) of Chapter 802 of the 1989 Session Laws (1989 Session). That act states that the Commission may consider House Bills 1364 and 1372 in determining the nature, scope and aspects of the study. The relevant portions of Chapter 802 and the House and Senate Bills listed above are included in Appendix A. The Legislative Research Commission grouped this study in its Agriculture and Criminal Law area under the direction of Representative Fred Bowman. The Committee was chaired by

Senator T. L. Odom and Representative Roy Cooper. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

## COMMITTEE PROCEEDINGS

The Legislative Research Commission Committee on the Insanity Verdict and Guilty But Insane Verdict met seven times between November 29, 1989 and November 28, 1990. Below is a brief summary of each meeting. More detailed minutes of the committee's proceedings are available in the committee notebook in the Legislative Library.

### November 29, 1989

The first meeting of the Committee on the Insanity Verdict and Guilty But Insane Verdict was held November 29, 1989 at 2:00 p.m. in Room 1228 of the Legislative Building.

The meeting was mostly organizational in nature. The Committee was given an overview of current North Carolina law on the insanity plea as well as pertinent federal law.

The Committee also looked at a comparison sheet on other states which have both an insanity defense and a guilty but mentally ill sentence. Copies of the legislation proposed by the Criminal Code Revision Study Commission in 1985 were also distributed.

### January 10, 1990

The second meeting of the Committee on the Insanity Verdict and Guilty But Insane Verdict was held January 10, 1990 at 2:00 p.m. in Room 1228 of the Legislative Building.

The Committee viewed a videotape of a panel discussion of the insanity defense from the National Institute of Justice. The panel supported the guilty but mentally ill verdict. The Committee also heard a report from the

Conference of District Attorney which opposed enactment of a guilty but mentally ill verdict.

Representatives of the Attorney General's office and the North Carolina Alliance for the Mentally Ill testified about legal insanity and mental illness in the context of involuntary commitment.

February 14, 1990

The third meeting of the Committee on the Insanity Verdict and Guilty But Insane Verdict was held February 14, 1990 at 2:00 p.m. in Room 1027 of the Legislative Building.

The Director of the Institute on Mental Disability and the Law for the National Center for State Courts spoke on efforts to reform the insanity defense area of the law. He related experiences that other states have had with an alternative guilty but mentally ill verdict. The GMBI verdict has been adopted by twelve states. The data presented showed that, in those states, there had been no appreciable curtailment of the insanity acquittals.

The Committee also heard from a prosecutor in the Michael Hayes case, the Chief of Mental Health and Psychological Services in the Division of Prisons, a psychiatrist at Central Prison, the Chairman of the Psychiatry and Law Committee of the North Carolina Psychiatric Association, the Orange-Chatham Public Defender, a professor of psychiatry, and members of the public.

March 13, 1990

The fourth meeting of the Committee on the Insanity Verdict and Guilty But Insane Verdict was held March 13, 1990 at 10:00 a.m. in Room 1425 of the Legislative Building.

Committee Counsel gave an overview of the ABA standards for insanity acquitees. Next, the Committee heard from the Forensic Psychiatrist and Clinical Director for Pre-trial Evaluation Services at Dorothea Dix Hospital who recommended stricter standards for insanity acquitees than for other involuntarily committed patients.

Counsel to the Department of Mental Health described commitment procedures in normal involuntary commitments and pointed out the differences for persons who have committed violent crimes. The Deputy Director of the Mental Health Programs in the Department of Mental Health spoke on statutory safeguards in procedures for involuntary commitment of persons charged with violent crimes.

The Committee also heard from representatives of the Diamond School of Buddhism and the Victims' Compensation Program.

April 12, 1990

The fifth meeting of the Committee on the Insanity Verdict and Guilty But Insane Verdict was held April 13, 1990 at 2:00 p.m. in Room 1228 of the Legislative Building.

A representative of the Attorney General's office spoke on involuntary commitment laws and hearing procedures. The Special Counsel at Dorothea Dix Hospital gave an overview of procedures and hearings at State Hospitals.

The final speaker was the legislative counsel to the North Carolina Bar Association who urged adoption of the ABA standards on civil commitment.

September 19, 1990

The sixth meeting of the Committee on the Insanity Verdict and Guilty But Insane Verdict was held September 19, 1990 at 10:00 a.m. in Room 1228 of the Legislative Building.

Representatives of the Attorney General's office spoke on proposed amendments they would like to see to civil commitment procedures. Commitment procedures in Washington D.C. were discussed.

The Chairman asked for a vote on the direction the Committee wished to take. The Committee unanimously agreed to no longer consider recommending the enactment of a Guilty But Mentally Ill Verdict and to recommend amendments to civil commitment procedures.

Staff was directed to draft, in conjunction with the Attorney General's office, legislation modeled after the Washington D.C. statute. Major amendments would provide for automatic commitment of persons found not guilty by reason of insanity and would shift the burden of proof to the defendant to show that he is no longer mentally ill or dangerous.

November 28, 1990

The seventh and final meeting of the Committee on the Insanity Verdict and Guilty But Insane Verdict was held on November 28, 1990 at 10:00 in Room 1228 of the Legislative Building.

The Committee reviewed the draft of the proposed legislation and the final report and approved it as amended.

## FINDINGS AND RECOMMENDATIONS

### FINDING

The Legislative Research Commission Committee on the Insanity Verdict and Guilty But Insane Verdict finds that enactment of the Guilty But Mentally Ill (GBMI) verdict in other jurisdictions has not resulted in a reduction in insanity verdicts, but has, in fact, created a new sub-category of guilty verdict.

GBMI verdicts have also come under constitutional challenge in several states and may make the imposition of the death penalty more difficult.

Finally, verdicts of not guilty by reason of insanity have been exceedingly rare in North Carolina which applies the strictest possible standard for such a verdict.

### RECOMMENDATION

The Committee recommends that North Carolina retain its current verdict structure and that a Guilty But Mentally Ill verdict not be instituted at this time and not be reconsidered until a final decision has been made by the United States Supreme Court.

## FINDING

The Legislative Research Commission Committee on the Insanity Verdict and Guilty But Insane Verdict also finds that North Carolina's civil commitment laws are inadequate to protect the public from persons who have been involuntarily committed following a finding of not guilty by reason of insanity of a violent crime.

Among the problems cited were the requirement of a rehearing following acquittal and frequent rehearings thereafter.

Placement of the burden of proof on the state to show that the person committed is still dangerous or mentally ill was frequently mentioned as a serious impediment to continued treatment.

## RECOMMENDATION

The Committee recommends that the civil commitment laws in this state be strengthened to provide longer and more stringent supervision and treatment of persons acquitted by reason of insanity of violent crimes.

The Committee recommends changes modeled after the law in Washington D.C., which has been upheld by the U.S. Supreme Court.

The text of these recommendations can be found in Legislative Proposal I and include automatic commitment to a state hospital upon acquittal by reason of insanity, longer periods of time between rehearings, and shifting the burden of proof from the state to the person who has been committed.

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION  
RATIFIED BILL

CHAPTER 802  
SENATE BILL 231

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Studies Act of 1989."

...

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1989 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

" ... "

(17) Insanity Verdict (H.B. 1364 - Rhodes), and Guilty but Insane Verdict (H.B. 1372 - Sizemore),

" ... "

Sec. 2.2. Legislative Activity Between Legislative Sessions and Procedures to Shorten the Legislative Session. The Legislative Research Commission may study the procedures of this State's, other states' and other legislative bodies' practices and procedures regulating legislative and study activity and may make recommendations as to changes in law, procedures and rules that will lead to greater efficiency in the legislative process while safeguarding the rights of all members of the General Assembly and of the citizens in this State's legislative process.

Sec. 2.3. State Capital Assets and Improvements (S.B. 1240 - Sherron). The Legislative Research Commission may study the:

- (1) Inventory of State capital assets and the use of those assets,
- (2) Issue of preventive maintenance for State buildings, and
- (3) Need and feasibility of:
  - a. Establishing in the State budget a reserve for repairs and renovations and the administration of such a reserve, and
  - b. Charging rent to State agencies using State buildings.

Sec. 2.4. Committee Membership. For each Legislative Research Commission Committee created during the 1989-1991 biennium, the Cochairmen of the Commission each shall appoint a minimum of seven members.

Sec. 2.5. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1990 Session of the 1989 General Assembly or the 1991 General Assembly, or both.

Sec. 2.6. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.7. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

...

#### PART XXV.-----EFFECTIVE DATE

Sec. 25.1. This act shall become effective July 1, 1989.

In the General Assembly read three times and ratified this the 12th day of August, 1989.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

2

HOUSE BILL 1364  
Committee Substitute Favorable 5/18/89

Short Title: Insanity Verdict Study Comm.

(Public)

---

Sponsors:

---

Referred to:

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April 21, 1989

- 1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH A COMMISSION TO STUDY THE ISSUES OF  
3 WHETHER OR NOT THE SUBSTANTIVE CRIMINAL LAW OF NORTH  
4 CAROLINA SHOULD INCLUDE A VERDICT OF GUILTY BUT MENTALLY  
5 ILL AND WHETHER THE EXISTING LAW OF NORTH CAROLINA  
6 REGARDING INVOLUNTARY COMMITMENT OF THOSE DEFENDANTS  
7 FOUND NOT GUILTY BY REASON OF INSANITY IS ADEQUATE TO  
8 PROTECT THE PUBLIC.
- 9 The General Assembly of North Carolina enacts:
- 10                   Section 1. The Insanity Verdict Study Commission is created. The  
11 Commission shall consist of 16 members to be appointed by the Speaker of the House  
12 of Representatives, the President Pro Tempore of the Senate, and the Governor of  
13 North Carolina as set forth below:
- 14                   (1) The Speaker of the House of Representatives shall appoint:
- 15                   a. Four members of the House of Representatives;
- 16                   b. A duly-licensed physician employed by the State of North  
17 Carolina practicing psychiatry at a State hospital for the  
18 treatment of the mentally ill; and

1 c. A duly-elected sheriff of a county or his designated  
2 representative.

3 (2) The President Pro Tempore of the Senate shall appoint:

4 a. Four members of the Senate;

5 b. The Attorney General of North Carolina or his designated  
6 representative; and

7 c. A duly-elected District Attorney.

8 (3) The Governor of North Carolina shall appoint:

9 a. A duly-licensed attorney practicing criminal law in the  
10 General Court of Justice of North Carolina, Superior Court  
11 Division;

12 b. A representative of a victims' group;

13 c. A representative of an advocacy group for the mentally ill;  
14 and

15 d. A citizen of North Carolina to be appointed at large.

16 Sec. 2. The President Pro Tempore of the Senate shall designate one  
17 Senator as cochairman and the Speaker of the House of Representatives shall  
18 designate one Representative as cochairman.

19 Sec. 3. The Commission shall:

20 (1) Study the entire area of the insanity defense in criminal cases;

21 (2) Recommend potential changes to the law of North Carolina,  
22 including but not limited to determining whether the criminal law  
23 of North Carolina should permit a verdict of guilty but mentally ill;

24 (3) Determine and evaluate the sentencing, incarceration, and  
25 hospitalization alternatives arising both out of insanity pleas and  
26 verdicts and in determinations of incapacity to proceed under  
27 current law and under any proposal the Commission may make for  
28 changes in the law; and

29 (4) Determine whether the current law of North Carolina regarding  
30 the involuntary commitment of those defendants found not guilty  
31 by reason of insanity and those defendants having been found  
32 incompetent to stand trial is adequate to protect the public and  
33 recommend any changes that may be necessary to better assure  
34 public safety and welfare.

1           Sec. 4. The Commission shall submit a final report of its findings and  
2 recommendations to the General Assembly on or before the first day of the 1989  
3 Session of the General Assembly, Regular Session 1990, by filing the report with the  
4 President Pro Tempore of the Senate and the Speaker of the House of  
5 Representatives. Upon filing its final report, the Commission shall terminate. Any  
6 proposed legislation which may arise upon recommendations from the Commission  
7 may be introduced without the necessity of any suspension of the rules in order to be  
8 considered by the 1989 Session of the General Assembly, Regular Session 1990.

9           Sec. 5. The Commission, while in the discharge of official duties, may  
10 exercise all the powers provided for under the provisions of G.S. 120-19, and G.S.  
11 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the  
12 joint call of the cochairmen. The Commission may meet in the Legislative Building  
13 or the Legislative Office Building.

14           Sec. 6. Members of the Commission who are members of the General  
15 Assembly shall receive subsistence and travel expenses at the rates set forth in G.S.  
16 120-3.1. Other members shall receive per diem, travel, and subsistence as provided  
17 by G.S. 138-5 or G.S. 138-6 as appropriate.

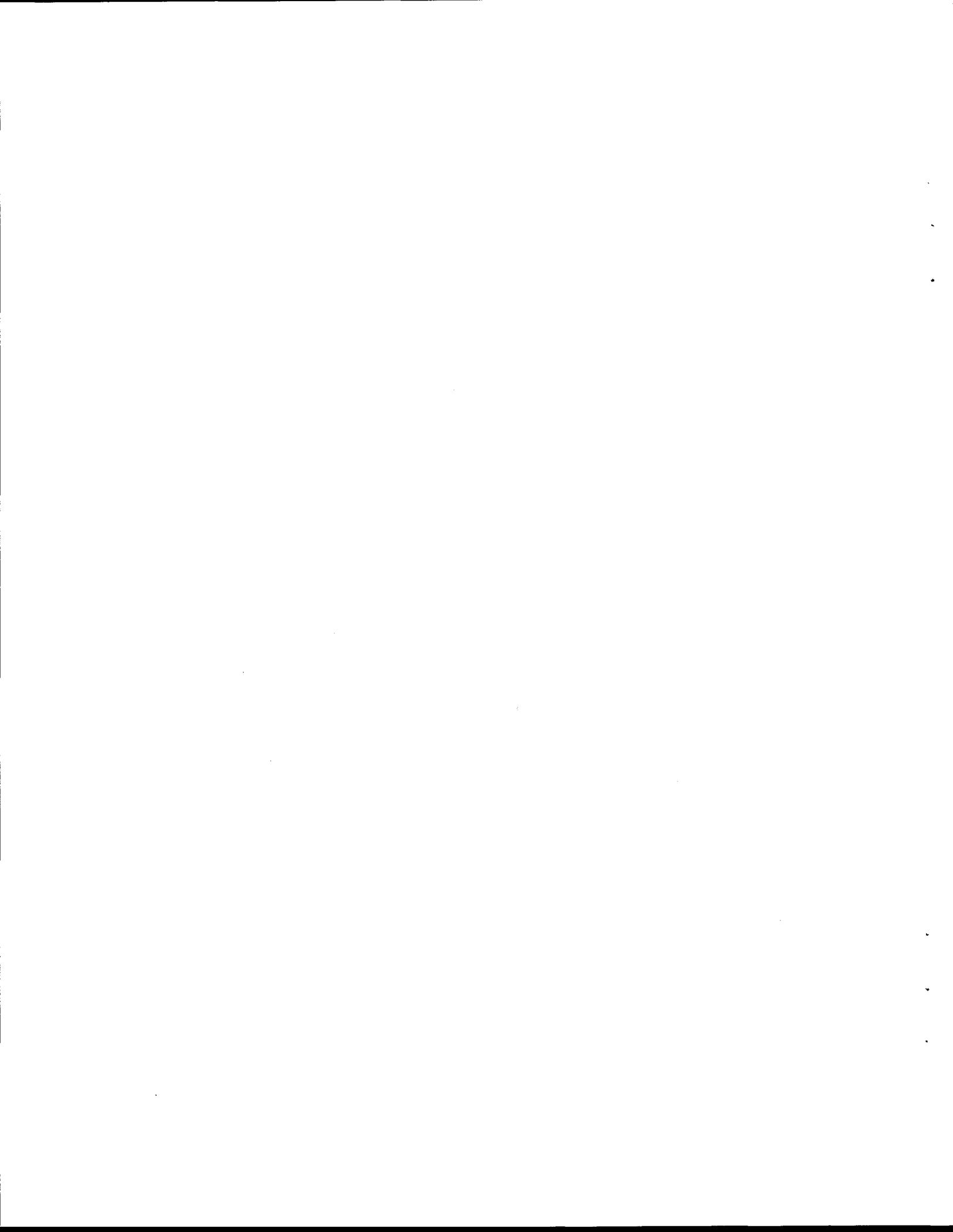
18           Sec. 7. The Commission may contract for professional, clerical, or  
19 consultant services, subject to the provisions of G.S. 120-32.02. The Legislative  
20 Services Commission, through the Legislative Administrative Officer, shall assign  
21 professional staff to assist in the work of the Commission. The House of  
22 Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to  
23 the Commission, upon the direction of the Legislative Services Commission. The  
24 expenses relating to clerical employees shall be borne by the Commission.

25           Sec. 8. When a vacancy occurs in the membership of the Commission  
26 the vacancy shall be filled by the same appointing officer who made the initial  
27 appointment.

28           Sec. 9. All State departments and agencies and local governments and  
29 their subdivisions shall furnish the Commission with any information in their  
30 possession or available to them.

31           Sec. 10. There is appropriated to the Insanity Verdict Study Commission  
32 the sum of \$50,000 from the General Fund for the 1989-90 fiscal year for the  
33 expenses of the Commission.

34           Sec. 11. This act shall become effective July 1, 1989.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 1372

Short Title: Guilty But Insane Verdict Study.

(Public)

---

Sponsors: Representatives Sizemore; Barnes, Bowie, Bowman, Brubaker, J. Crawford, Cromer, Duncan, Esposito, Gist, Hege, Holmes, Huffman, Jones, Justus, Kerr, Lilley, Lineberry, Nye, Pope, Redwine, Rhyne, Stam, Warren, and P. Wilson.

---

Referred to: Rules.

---

April 24, 1989

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH A COMMISSION TO STUDY THE ISSUE OF  
3 WHETHER OR NOT NORTH CAROLINA LAW SHOULD INCLUDE A  
4 GUILTY BUT INSANE VERDICT.

5 The General Assembly of North Carolina enacts:

6                   Section 1. The Insanity Verdict Study Commission is created. The  
7 Commission shall consist of nine members: three Senators appointed by the  
8 President Pro Tempore of the Senate, three Representatives appointed by the  
9 Speaker of the House of Representatives, and three persons appointed by the  
10 Governor who are not members of the General Assembly.

11                   Sec. 2. The President Pro Tempore of the Senate shall designate one  
12 Senator as cochairman and the Speaker of the House of Representatives shall  
13 designate one Representative as cochairman.

14                   Sec. 3. The Commission shall:

15                   (1) Study the entire area of the insanity defense in criminal cases;

1           (2) Recommend potential changes to North Carolina law, including  
2           but not limited to determining whether North Carolina law should  
3           permit a verdict of guilty but insane; and

4           (3) Determine the sentencing, incarceration, and hospitalization  
5           alternatives arising out of insanity pleas and verdicts under current  
6           law and under any proposal the Commission may make for  
7           changes in the law.

8           Sec. 4. The Commission shall submit a final report of its findings and  
9           recommendations to the General Assembly on or before the first day of the 1989  
10          Session of the General Assembly, Regular Session 1990 by filing the report with the  
11          President Pro Tempore of the Senate and the Speaker of the House of  
12          Representatives. Upon filing its final report, the Commission shall terminate.

13          Sec. 5. The Commission, while in the discharge of official duties, may  
14          exercise all the powers provided for under the provisions of G.S. 120-19, and G.S.  
15          120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the  
16          joint call of the cochairmen. The Commission may meet in the Legislative Building  
17          or the Legislative Office Building.

18          Sec. 6. Members of the Commission who are members of the General  
19          Assembly shall receive subsistence and travel expenses at the rates set forth in G.S.  
20          120-3.1. Other members shall receive per diem, travel, and subsistence as provided  
21          by G.S. 138-5 or G.S. 138-6 as appropriate.

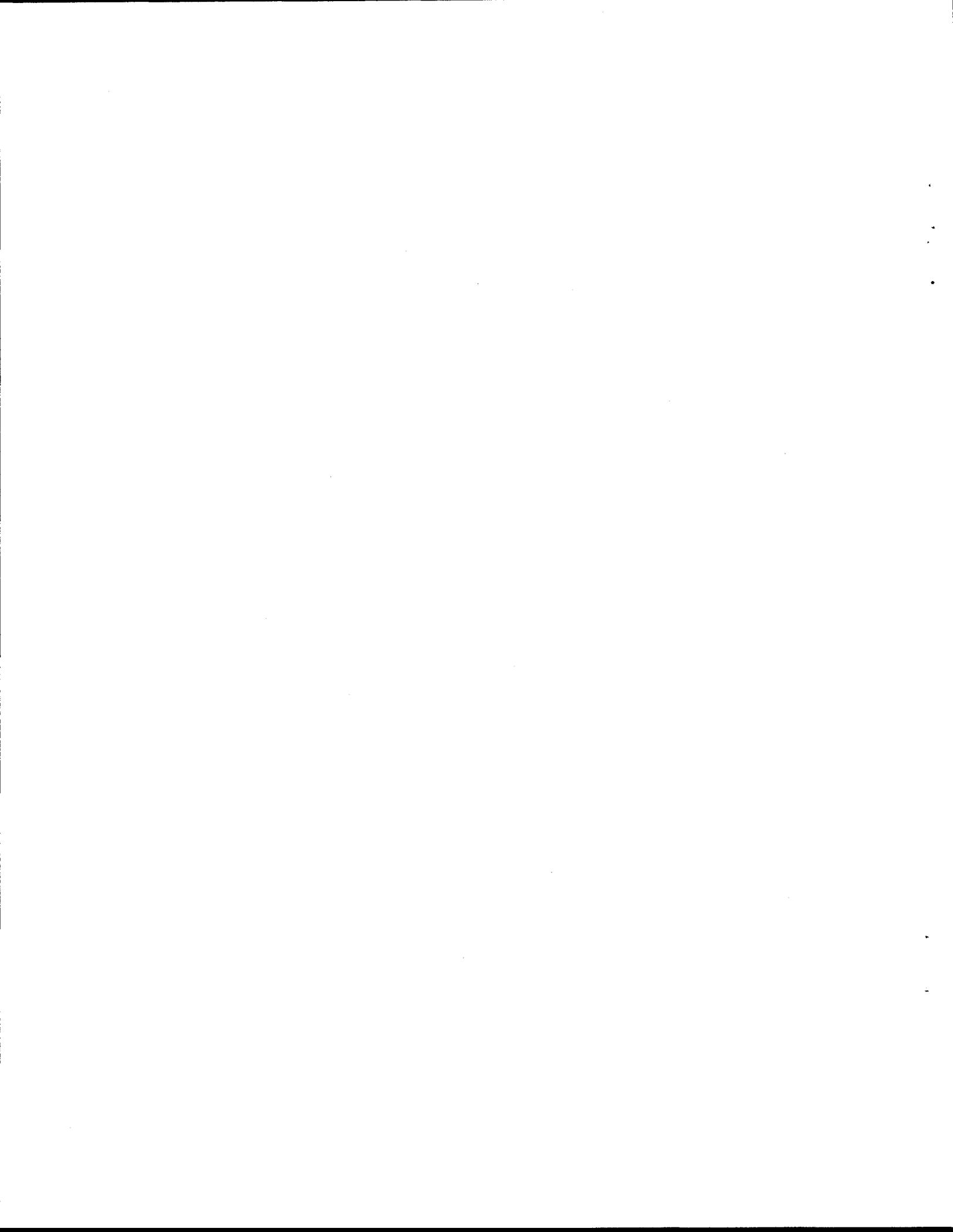
22          Sec. 7. The Commission may contract for professional, clerical, or  
23          consultant services as provided by G.S. 120-32.02. The Legislative Services  
24          Commission, through the Legislative Administrative Officer, shall assign professional  
25          staff to assist in the work of the Commission. The House of Representatives' and the  
26          Senate's Supervisors of Clerks shall assign clerical staff to the Commission, upon the  
27          direction of the Legislative Services Commission. The expenses relating to clerical  
28          employees shall be borne by the Commission.

29          Sec. 8. When a vacancy occurs in the membership of the Commission the  
30          vacancy shall be filled by the same appointing officer who made the initial  
31          appointment.

32          Sec. 9. All State departments and agencies and local governments and  
33          their subdivisions shall furnish the Commission with any information in their  
34          possession or available to them.

1           Sec. 10. There is appropriated from the General Fund to the General  
2 Assembly for fiscal year 1989-90, \$20,000 for the expenses of the Commission.

3           Sec. 11. This act shall become effective July 1, 1989.



## APPENDIX B

### MEMBERSHIP OF LRC COMMITTEE ON INSANITY VERDICT AND GUILTYLY BUT INSANE VERDICT

#### INSANITY--INSANITY VERDICT

##### LRC Member in Charge:

Rep. J. Fred Bowman  
814 N. Graham-Hopedale Road  
Burlington, NC 27217  
(919)228-7521

##### Members

##### President Pro Tem's Appointments

Sen. T. LaFontine 'Fountain' Odom  
Co-Chairman  
1100 S. Tryon Street  
Charlotte, NC 28203  
(704)372-4800

Sen. Austin M. Allran  
Box 2907  
Hickory, NC 28603  
(704)322-5437

Mr. Geoffrey Hulse  
1313 Park Avenue B  
Goldsboro, NC 27530  
(919)736-2323

Sen. Wanda H. Hunt  
P.O. Box 1335  
Pinehurst, NC 28374  
(919)295-3794

Sen. Helen R. Marvin  
119 Ridge Lane  
Gastonia, NC 28054  
(704)864-2757

Sen. A. P. 'Sandy' Sands, III  
P.O. Box 449  
Reidsville, NC 27323-0449  
(919)349-7041

Hon. Colon Willoughby  
Wake County District Attorney  
P.O. Box 31  
Raleigh, NC 27602  
(919)733-2600

##### Speaker's Appointments

Rep. Roy A. Cooper, III  
Co-Chairman  
P.O. Drawer 4538  
Rocky Mount, NC 27803  
(919)442-3115

Ms. Linda Cantrell  
5620 Judy Lane  
Winston-Salem, NC 27127  
(919)764-2608

Rep. Theresa H. Esposito  
207 Stanaford Road  
Winston-Salem, NC 27104  
(919)765-5176

Rep. David T. Flaherty, Jr.  
228 Pennton Avenue, SW  
Lenoir, NC 28645  
(704)754-0961

Rep. Thomas C. Hardaway  
P.O. Box 155  
Enfield, NC 27823  
(919)445-2371

Rep. E. David Redwine  
P.O. Box 283  
Shalotte, NC 28459  
(919)754-4326

Rep. Frank E. Rhodes  
4701 Whitehaven Road  
Winston-Salem, NC 27106  
(919)924-2878

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(919)733-6660

**Clerk:**

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Legislative Building, Room 2202  
O: (919)733-5752  
H: (919)876-3916

## APPENDIX C

### PROPOSED LEGISLATION

#### SUMMARY OF LEGISLATIVE PROPOSAL I

Section 1 of repeals language made redundant by the subsequent amendatory language.

Section 2 provides that a person found not not guilty by reason of insanity of a violent crime shall be automatically committed to the state hospital for a period of not less than 50 nor more than 90 days. Any hearing or rehearing prior to discharge or conditional release would be required to be held in the same trial division as the original trial and be open to the public. Notice would be required to be given to interested parties.

Section 3 provides that following initial commitment, there shall be no rehearing until at least 50 days have passed. The section also provides that the person who has been committed pursuant to this act shall bear the burden of proving by a preponderance of the evidence that he is no longer mentally ill and no longer dangerous to himself or others.

Section 4 provides that there shall be no release or discharge until at least 50 days have passed from initial commitment and shifts the burden of proof to the person committed to prove eligibility for release.

Section 5 provides that the act is effective October 1, 1991.



NORTH CAROLINA GENERAL ASSEMBLY

SESSION 1989  
DRAFT PROPOSED HOUSE BILL

H

D

DR90-RO-002

THIS IS A DRAFT 29-NOV-90 09:48:57

Short Title: AUTOMATIC COMMITMENT OF CERTAIN PERSONS  
FOUND NOT GUILTY BY REASON OF INSANITY (PUBLIC)

---

Sponsors:

---

Referred to:

---

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR AUTOMATIC COMMITMENT OF PERSONS  
3 FOUND NOT GUILTY BY REASON OF INSANITY OF VIOLENT  
4 CRIMES AND SHIFTING BURDEN OF PROOF.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 15A-1321 reads as rewritten:  
7 "15A-1321. Civil commitment of defendants found not guilty by reason of  
8 insanity.  
9 ~~When~~ Except as provided in G.S. 15A-1321.1, when a defendant charged  
10 with a crime is found not guilty by reason of insanity by jury verdict or upon  
11 motion pursuant to G.S. 15A-959(c), the presiding judge upon such additional  
12 hearing, if any, as he determines to be necessary, shall determine whether  
13 there are reasonable grounds to believe the defendant meets the criteria for  
14 involuntary commitment under Part 7 of Article 5 of Chapter 122C of the  
15 General Statutes. If the presiding judge finds reasonable grounds to believe  
16 that the defendant meets the criteria, he shall make findings of fact and issue a  
17 custody order in the same manner, upon the same grounds, and with the same  
18 effect, as an order issued by a clerk or magistrate pursuant to G.S. 122C-261.  
19 Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter

~~1 122C of the General Statutes. However, if the defendant was charged with a  
2 violent crime, including a crime involving assault with a deadly weapon, the  
3 judge's custody order shall require a law-enforcement officer to take the  
4 defendant directly to a 24-hour facility as described in G.S. 122C-252; and the  
5 order must indicate that the defendant was charged with a violent crime and  
6 that he was found not guilty by reason of insanity.~~

7  
8           Sec. 2. Article 80 of Chapter 15A is amended by adding a new  
9 section to read:

10    "§15A-1321.1. Automatic commitment of defendants charged with a violent  
11 crime and found not guilty by reason of insanity.

12    (a) When a defendant charged with a violent crime, including a crime  
13 involving assault with a deadly weapon, is found not guilty by reason of  
14 insanity by jury verdict or upon motion pursuant to G.S. §15A-959(c), in lieu  
15 of an initial hearing for involuntary commitment pursuant to Part 7, Art. 5,  
16 Ch. 122C, the presiding judge shall enter an order finding that the defendant  
17 has been found not guilty by reason of insanity of a violent crime and granting  
18 custody of the defendant to a law-enforcement officer, who shall take the  
19 defendant directly to a state 24-hour facility designated pursuant to G.S.  
20 §122C-252 to be committed to that facility for a period of not less than fifty  
21 days but not to exceed ninety days.

22    (b) A defendant who is committed pursuant to subsection (a) of this  
23 section, shall remain committed until such time as he is eligible for release  
24 pursuant to G.S. §122C-276 or §122C-277(b).

25    (c) Notwithstanding any other provision of law, any hearing or  
26 rehearing concerning discharge or conditional release of a defendant charged  
27 with a violent crime and committed pursuant either to subsection (a) of this  
28 section or G.S. 15A-1321 shall take place in the trial division in which the  
29 original trial was held and shall be open to the public. For purposes of this  
30 section "trial division" means either the Superior Court Division or the district  
31 court division of the General Court of Justice.

32    (d) Upon receipt of notice pursuant to G.S. 122C-276(a) or G.S. 122C-  
33 276(b), the district attorney of the county in which the defendant was found  
34 not guilty by reason of insanity of a violent crime shall notify any persons he  
35 deems appropriate, including anyone who has filed a written request for  
36 notification with his office, of any hearing or rehearing concerning discharge or  
37 conditional release of that defendant. Notice shall be sent by first class mail to  
38 the individual's last known address.

39  
40           Sec. 3. G.S. 122C-276 reads as rewritten:

41    "§122C-276. Inpatient commitment; hearings.

42    (a) Fifteen days before the end of the initial inpatient commitment period if  
43 the attending physician determines that commitment of a respondent beyond  
44 the initial period will be necessary, he shall so notify the clerk of superior

1 court of the county in which the facility is located. The clerk, at least 10 days  
2 before the end of the initial period, on order of a district court judge of the  
3 district court district as defined in G.S. 7A-133 in which the facility is located,  
4 shall calendar the rehearing. If the respondent was initially committed as the  
5 result of conduct resulting in his being charged with a violent crime, including  
6 a crime involving an assault with a deadly weapon, and respondent was found  
7 not guilty by reason of insanity or incapable of proceeding, the clerk shall also  
8 notify the chief district court judge, the clerk of superior court, and the district  
9 attorney in the county in which the respondent was found not guilty by reason  
10 of insanity or incapable of proceeding of the time and place of the hearing.

11 (b) Fifteen days before the end of the initial treatment period of a  
12 respondent who was initially committed as a result of conduct resulting in his  
13 being charged with a violent crime, including a crime involving an assault with  
14 a deadly weapon, having been found not guilty by reason of insanity or  
15 incapable of proceeding, if the attending physician determines that  
16 commitment of the respondent beyond the initial period will not be necessary,  
17 he shall so notify the clerk of superior court who shall schedule a rehearing as  
18 provided in subsection (a) of this section. Provided, that in no event shall  
19 rehearing be allowed for a respondent committed after being found not guilty  
20 by reason of insanity of commission of a violent crime before fifty days have  
21 passed since the date of his initial commitment to the state facility.

22 (c) Subject to the provisions of G.S. 122C-269(c), rehearsings shall be held  
23 at the facility in which the respondent is receiving treatment. The judge is a  
24 judge of the district court of the district court district as defined in G.S. 7A-  
25 133 in which the facility is located or a district court judge temporarily  
26 assigned to that district.

27 (d) Notice and proceedings of rehearsings are governed by the same  
28 procedures as initial hearings and the respondent has the same rights he had at  
29 the initial hearing including the right to appeal. Provided, that in a rehearing  
30 for a respondent committed pursuant to G.S. 15A-1321.1, or G.S. 15A-1321 if  
31 charged with a violent crime, the respondent shall bear the burden to prove by  
32 a preponderance of the evidence that he is no longer mentally ill and that he is  
33 no longer either dangerous to himself or others and that, therefore, he is  
34 entitled to release. For purposes of this section, dangerous to others means  
35 that within the relevant past, the individual has inflicted or attempted to inflict  
36 or threatened to inflict serious bodily harm on another, or has acted in such a  
37 way as to create a substantial risk of serious bodily harm to another, or has  
38 engaged in extreme destruction of property; and that there is a reasonable  
39 probability that this conduct will be repeated. Previous episodes of  
40 dangerousness to others shall be considered when determining reasonable  
41 probability of future dangerous conduct. Clear, cogent, and convincing  
42 evidence that an individual has committed a homicide in the relevant past is  
43 prima facie evidence of dangerousness to others.

1 (e) At rehearings the court may make the same dispositions authorized in  
2 G.S. 122C-271(b) except a second commitment order may be for an additional  
3 period not in excess of 180 days.

4 (f) Fifteen days before the end of the second commitment period and  
5 annually thereafter, the attending physician shall review and evaluate the  
6 condition of each respondent; and if he determines that a respondent is in  
7 continued need of inpatient commitment or, in the alternative, in need of  
8 outpatient commitment, or a combination of both, he shall so notify the  
9 respondent, his counsel, and the clerk of superior court of the county, in which  
10 the facility is located. Unless the respondent through his counsel files with the  
11 clerk a written waiver of his right to a rehearing, the clerk, on order of a  
12 district court judge of the district in which the facility is located, shall calendar  
13 a rehearing for not later than the end of the current commitment period. The  
14 procedures and standards for the rehearing are the same as for the first  
15 rehearing. No third or subsequent inpatient recommitment order shall be for a  
16 period longer than one year.

17 (g) At any rehearings the court has the option to order outpatient  
18 commitment for a period not in excess of 180 days in accordance with the  
19 criteria specified in G.S. 122C-263(d)(1) and following the procedures as  
20 specified in this Article.

21

22 Sec. 4. G.S. 122C-277 reads as rewritten:

23 "§122C-277. Release and conditional release; judicial review.

24 (a) Except as provided in subsection (b) of this section, the attending  
25 physician shall discharge a committed respondent unconditionally at any time  
26 he determines that the respondent is no longer in need of inpatient  
27 commitment. However, if the attending physician determines that the  
28 respondent meets the criteria for outpatient commitment as defined in G.S.  
29 122C-263(d)(1), he may request the clerk to calendar a supplemental hearing  
30 to determine whether an outpatient commitment order shall be issued. Except  
31 as provided in subsection (b) of this section, the attending physician may also  
32 release a respondent conditionally for periods not in excess of 30 days on  
33 specified medically appropriate conditions. Violation of the conditions is  
34 grounds for return of the respondent to the releasing facility. A  
35 law-enforcement officer, on request of the attending physician, shall take a  
36 conditional releasee into custody and return him to the facility in accordance  
37 with G.S. 122C-205. Notice of discharge and of conditional release shall be  
38 furnished to the clerk of superior court of the county of commitment and of the  
39 county in which the facility is located.

40 (b) If the respondent was initially committed as the result of conduct  
41 resulting in his being charged with a violent crime, including a crime involving  
42 an assault with a deadly weapon, and respondent was found not guilty by  
43 reason of insanity or incapable of proceeding, 15 days before the respondent's  
44 discharge or conditional release the attending physician shall notify the clerk of

1 superior court of the county in which the facility is located of his determination  
2 regarding the proposed discharge or conditional release. Provided, that in no  
3 event shall discharge or conditional release be allowed for a respondent  
4 committed after being found not guilty by reason of insanity of committing a  
5 violent crime before fifty days have passed since the date of his initial  
6 commitment to the state facility. The clerk shall then schedule a rehearing to  
7 determine the appropriateness of respondent's release under the standards of  
8 commitment set forth in G.S. 122C- 271(b). The clerk shall give notice as  
9 provided in G.S. 122C-264(d). The district attorney of the district where  
10 respondent was found not guilty by reason of insanity or incapable of  
11 proceeding may represent the State's interest at the hearing. In such hearings  
12 as are conducted pursuant to this section for persons found not guilty by reason  
13 of insanity of committing a violent crime, the respondent shall bear the burden  
14 of proving by a preponderance of the evidence that he is no longer mentally ill  
15 and that he is no longer either dangerous to himself or others, and that,  
16 therefore, he is entitled to release. For purposes of this section, dangerous to  
17 others means that within the relevant past, the individual has inflicted or  
18 attempted to inflict or threatened to inflict serious bodily harm on another, or  
19 has acted in such a way as to create a substantial risk of serious bodily harm to  
20 another, or has engaged in extreme destruction of property; and that there is a  
21 reasonable probability that this conduct will be repeated. Previous episodes of  
22 dangerousness to others shall be considered when determining reasonable  
23 probability of future dangerous conduct. Clear, cogent, and convincing  
24 evidence that an individual has committed a homicide in the relevant past is  
25 prima facie evidence of dangerousness to others.

26 (c) If a committed respondent under either subsection (a) or (b) of this  
27 section is from a single portal area, the attending physician shall plan jointly  
28 with the area authority as prescribed in the area plan before discharging or  
29 releasing the respondent.

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Sec. 5. This act becomes effective October 1, 1991.

